Although in that reference the Federal Court was dealing with Emergency legislation made under Article 150 of the Constitution the observation above would seem to me to be of general application. Therefore I hold that section 418A of the Criminal Procedure Code is not invalid and the certificate issued by the Public Prosecutor under that section is likewise not invalid.

Order accordingly.

Solicitors: *Paramjit & Co.*

RE P.E. LONG @ JIMMY & ORS.; P.E. LONG & ORS. v. MENTERI HAL EHWAL DALAM NEGERI MALAYSIA & ORS.

[O.Cr.J. (Arulanandom J.) April 15, 1976]

[Penang — Miscellaneous Criminal Applications Nos. 5, 6 and 7 of 1976]

Criminal Law & Procedure — Habeas Corpus — Detention under Emergency (Public Order and Prevention of Crime) Ordinance, 1969 — Whether trafficking in drugs comes within the scope of Ordinance — Whether persons arrested informed of grounds of arrest — Opportunity to make representations — Whether detention unlawful — Emergency (Public Order and Prevention of Crime) Ordinance, 1969, ss. 3, 4 and 5 — Criminal Procedure Code (F.M.S. Cap. 6), s. 365 — Federal Constitution, art. 5.

Administrative law — Habeas Corpus — Detention under Emergency (Public Order and Prevention of Crime) Ordinance, 1969 — Whether valid — Federal Constitution, art. 5.

Interpretation of statutes — Preamble.

In this case the applicants had been detained under the Emergency (Public Order and Prevention of Crime) Ordinance, 1969. It was alleged that they were engaged in drug trafficking. The applicants applied for writs of habeas corpus on the grounds —

(1) that the applicants' detention was not within the scope and object of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969;

(2) that the applicants were not informed of the grounds of their arrest and therefore there had been contravention of the provisions of Article 5(3) of the Federal Constitution;

(3) that the applicants had not been given an effective opportunity to make representations against their detention;

(4) that the copies of the purported detention orders served on the applicants were not signed and were not under the hand of the Minister.

Held, dismissing the applications: (1) the preamble of the Ordinance declared that it was passed for securing public order, the suppression of violence and the prevention of crime involved in violence and although the preamble is not part of the Ordinance one can look into it to understand the scope of the Ordinance. It is clear that securing public order covers suppression of crimes which endanger the safety of the people and cause harm to society. Detention of persons found to be trafficking in drugs is therefore well within the scope of the Ordinance as it is a notorious fact that the trafficking in drugs causes serious harm and destroys the body politic not only nationally but also internationally;

(2) the evidence in this case showed that the detainees were informed by the officers who arrested them of the grounds of the arrest. In any event any complaint about the arrest of the applicants would appear to be purely academic and of no relevance to an application for a writ of habeas corpus against the detention by order of the Minister of Home Affairs;

(3) although the forms supplied to the applicants to enable them to make representations against their detention were defective, the facts showed that that it was not that the applicants were not given an opportunity to make representations against the order of detention but that they for reasons best known to themselves were not interested or did not want to make representations against the orders of detention;

(4) it was not necessary that the orders of detention be signed personally by the Minister;

(5) the orders of detention in this case which were made by the Minister were valid and not justiciable in the absence of proof of *mala fides.*

Cases referred to:—

(1) *Re Ong Yew Teck* [1960] M.L.J. 67.

(2) *Ooi Ah Phua* v. *O.C. Criminal Investigation Kedah/Perlis* [1975] 2 M.L.J. 198.

(3) *Kochuni & Ors.* v. *The States of Madras and Kerala & Ors.* A.I.R. 1960 S.C. 1080, 1081.

(4) *Burrakur Coal Co.* v. *Union of India* A.I.R. 1961 S.C. 955.

(5) *Sheikh Gulfan* v. *Sant Kumar* A.I.R. 1965 S.C. 1839.

(6) *Sundararamier & Co.* v. *State of Andhra Pradesh* A.I.R. 1958 S.C. 468.

(7) *Ashbury* v. *Ellis* [1893] A.C. 339.

(8) *Charles Russel* v. *Queen* (1881-2) 7 App. Cas. 829.

(9) *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri* [1969] 2 M.L.J. 129.

(10) *Yeap Hock Seng* v. *Minister for Home Affairs* [1975] 2 M.L.J. 279.

CRIMINAL APPLICATIONS.

Karpal Singh (*K. Kumaraendran* and *R. Rajasingam* with him) for the applicants.

Abdullah bin Ngah and *Zaki bin Tun Azmi* (Senior Federal Counsel) for the respondents.

Arulanandom J.: These were three separate applications by the applicants for orders that writs of habeas corpus be issued to the respondents to have the applicants produced before the Honourable Court to undergo and receive, all and singular such matters and things as this Honourable Court shall then and there consider or concerning them on their behalf.

At the commencement of the proceedings counsel for the three applicants stated that the facts in all three cases were identical if not very similar and the law on which they founded their applications were identical. That being the case, it was agreed among them that there would only be one hearing on the matter and that all three applicants would abide by the decision as a result of the hearing of one application. The facts are as follows. Applicant in Criminal Application 5/76 one Patrick Eugene Long @ Jimmy, an American citizen, was on the 4th day of December 1975 arrested at the Holiday Inn, Kuala Lumpur. He was detained at the Circular Road Police Station until January 26, 1976 when he was brought to the Detention Camp at Pulau Jerejak, Penang. He was served with a copy of detention order under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and a copy of a statement under section 5(2)(b) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969. He was also served with two notifications of right to make representations and two forms with regard to his making representations against his detention. The applicant in Criminal Application No. 6/76 one Donnie Lee Avila @ Danny,

an American citizen, was also arrested on the 4th day of December, 1975, and detained at the Circular Road Police Station until January 26, 1976, after which he was brought to the detention camp at Pulau Jerejak, Penang. He was served with a copy of detention order under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and a copy of a statement under section 5(2)(b) of the (P.O.P.C.) Ordinance 1969. He was also served with two notifications of right to make representations and two forms with regard to his making representations against his detention. Applicant in Criminal Application 7/76 one Rudolf Robert Strictzbo @ Robbie @ Rob @ Radin Ariff, a citizen of the Netherlands, was arrested on the 5th day of January 1976 at No. 5-K, Hock Hin Terrace, Penang, and subsequently detained at the Salak South Police Station and finally at Pudu Prison in Kuala Lumpur. On the 4th day of March 1976 the applicant was served with a copy of detention order under section 4(1) of the Emergency (P.O.P.C.) Ordinance 1969 and also with a copy of a statement under section 5(2)(b) of the Emergency (P.O.P.C.) Ordinance 1969. He was also served with one notification of right to make representations and one form with regard to his making representations against his detention.

All applicants now seek writs of habeas corpus on the grounds that their initial and continued detention was illegal and unlawful on the following grounds:—

(i) That the applicant's detention is not within the scope and object of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969;

(ii) There has been contravention of the provisions of Article 5(3) of the Federal Constitution in that the applicant was not informed of the grounds of his arrest within reasonable time after arrest;

(iii) The applicant has not been given an effective opportunity to make representation against his detention as section 8 of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969, has not been repealed and deleted despite the repeal of the Emergency (Detained Non-Citizen) Regulations, 1964 as amended by section 5 of the Emergency (Internal Security) (Modification of Laws) Ordinance, 1969. As such the applicant is accordingly prejudiced in making representation against his detention order.

(iv) The copy of the purported detention order under the hand of the first respondent served on the applicant is unsigned. Further the statement under section 5(2)(b) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969 is not under the hand of the first respondent.

The applications are made under section 365 of the Criminal Procedure Code and insofar as it is material reads:—

"365. The High Court may whenever it thinks fit direct—

(i) that any person who

(a) is detained in any prison within the limits of the Federation on a warrant of extradition whether under the Extradition Ordinance, 1958, or the Commonwealth Fugitive Criminals Act, 1967; or

(b) is alleged to be illegally or improperly detained in public or private custody within the limits of the Federation,

be set at liberty;"

Mr. Karpal Singh on behalf of the applicants urged before the court that in view of Article 5 of the Constitution which has been infringed in the case of these applicants they are entitled to writs of habeas corpus. Article 5 of the Constitution subsections (1), (2) and (3) reads as follows:—

"(1) No person shall be deprived of his life or personal liberty save in accordance with law.

(2) Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

(3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice."

He submits that when it comes to a question of deprivation of liberty there must be strict compliance with the law. With this submission the court agrees. He also submits that Article 5 of the Federal Constitution applies to the Emergency Ordinance No. 5 of 1969 which the Senior Federal Counsel immediately conceded. On going through the grounds of application and the order in which he argued them the court will consider the second ground first, namely, that there has been contravention of the provisions of Article 5(3) of the Federal Constitution in that the applicants were not informed of the grounds of their arrest within reasonable time after their arrest. According to affidavits filed by the first and second applicants, one M. Ramalingam was the Inspector who arrested them at the Holiday Inn, Kuala Lumpur, but in reply to that Khoo Cheng Sye, a police officer of the Royal Malaysian Police of the rank of Assistant Superintendent of Police attached to Ibu Pejabat Cawangan Jenayah at Jalan Bukit Aman, Kuala Lumpur, swears by affidavit that he was the one who arrested these two persons at about 12.10 p.m. on the 4th day of December, 1975, at the Holiday Inn, Kuala Lumpur, as he had reason to believe that there were grounds which would justify their detention under section 4(1) of the Emergency (P.O.P.C.) Ordinance, 1969. Khoo Cheng Sye further swears that as soon as he arrested them he informed them of the grounds of their arrest and took them to the Circular Road Police Station, Kuala Lumpur, for detention pending further enquiries. He further swears that on the 26th of January, 1976, they were served with the Orders issued by the Minister under section 4(1) of the Emergency (P.O.P.C.) Ordinance, 1969, to detain them for a period of two years and subsequently they were taken to Pulau Jerejak, Penang.

Article 5(3) of the Constitution purely states that where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

Section 3(1), (2) and (3) of the Emergency (P.O.P.C.) Ordinance, 1969, reads as follows:—

"3. (1) Any police officer may without warrant arrest and detain pending enquires any person in respect of whom he has reason to believe that there are grounds which would justify his detention under section 4(1).

(2) Any police officer may without warrant arrest and detain pending enquiries any person who on being questioned by him fails to satisfy him as to his identity or as to the purposes for which he is in the place where he is found, if the

police officer suspects that person of having acted or being about to act or being likely to act in any manner prejudicial to public order or if he has reason to believe that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained.

(3) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty-days without an order of detention having been made in respect of him under section 4(1):

Provided that —

(a) he shall not be detained for more than twenty-four hours except with the authority of a police officer of or above the rank of Inspector;

(b) he shall not be detained for more than forty-eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent;

(c) he shall not be detained for more than thirty days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General of Police or to a police officer designated by the Inspector-General in that behalf who shall forthwith report the same to the Minister."

Conceding that Article 5(3) of the Constitution still applies to persons arrested under the Emergency (P.O.P.C.) Ordinance, 1969, the court is only bound to ascertain whether the persons arrested were informed of the grounds of their arrest. Both Patrick Eugene Long @ Jimmy and Donnie Lee Avila @ Danny state in their affidavits that they were arrested by M. Ramalingam who did not inform them of the grounds of their arrest but in the face of what they say Inspector M. Ramalingam has sworn an affidavit that he did not arrest the two persons and therefore their statements that he did not inform them of the grounds of their arrest have no substance at all because he was not the person who arrested them. Furthermore, another officer has deposed that he was the one who arrested them and told them what the grounds of their arrest were. It is quite clear, therefore, that these two applicants are in error as to the person who arrested them and one must accept the statement on oath by the officer who arrested them, namely, Khoo Cheng Sye, that they were informed of the grounds of their arrest. In the case of the applicant Rudolf Robert Strictzbo @ Robbie @ Rob @ Radin Ariff, one Juhana Bt. Annuar who swore the affidavit in support of his application states he was arrested by A.S.P. Ahmad Ragib. This officer has sworn two affidavits to say when he arrested the applicant he informed him of the grounds for arresting him and that he arrested him under section 3(1) of the Emergency (P.O.P.C.) Ordinance, 1969.

Counsel for the applicants argues that the affidavits of the officer does not give the grounds and that it is the duty of the courts to look into the grounds and see if the grounds are reasonable and that if the grounds are not reasonable Article 5(3) of the Constitution has been contravened. This submission is wholly without substance. Article 5(3) of the Constitution only states that the person arrested shall be informed as soon as may be of the grounds of his arrest and section 3(1) of the Emergency (P.O.P.C.) Ordinance, 1969, only states that any police officer may without warrant arrest and detain pending enquiries any person in respect of whom he has reason to believe that there are grounds which would justify his detention under section 4(1). No further conditions are required for a police officer to arrest a person under this section. It has been held that the discretion to decide on "reason to believe" that there are grounds to justify detention must necessarily rest with the officer arresting and the courts cannot go behind his decision. In *Re Ong Yew Teck*[1] (S'pore) the interpretation of the words "reason to believe that there are grounds which would justify the detention" were considered as section 55 of the Criminal Law (Temporary Provisions) Ordinance, 1955 uses those words in the same manner as our section 3(1) of the Emergency (P.O.P.C.) Ordinance, 1969. Section 55(1) of the said Ordinance provides as follows:—

"55. (1) Any police officer may without warrant arrest and detained pending enquiries any person in respect of whom he has reason to believe there are grounds which would justify the detention of such person under section 47 of this Ordinance."

The learned judge had this to say after giving lengthy reasons:—

"I am of the opinion that section 55(1) imposes a subjective test and as D.S.P. Ong Kian Tiong honestly supposed that he had reason to believe the required thing this court cannot go behind his statement that he had such reason to believe."

Hence in the cases before me it cannot be said that there was anything irregular or illegal in the arrest of the three applicants and there has therefore been no violation of the provisions of the Federal Constitution or the Emergency (P.O.P.C.) Ordinance, 1969.

Furthermore, in the case of *Ooi Ah Pua* v. *O.C. Criminal Investigation, Kedah/Perlis*[2] an applicant for a writ of habeas corpus had been arrested by the Kedah/Perlis Police and during his detention in police custody a solicitor wrote a letter asking to interview the applicant but was unsuccessful. Before the application for a writ of habeas corpus on that ground was filed in court the applicant had already been detained by order of a Magistrate. The application for a writ of habeas corpus was dismissed and the applicant appealed to the Federal Court. In dismissing the appeal Federal Court held that for ample reasons the police arrested the applicant without a warrant but by the time the application for habeas corpus was filed the applicant had already been detained on an order of a Magistrate and therefore there was no question of his detention being unlawful because of the circumstances of arrest. In view of this judgment and my earlier findings on the question of arrest there is no merit in this ground and for purposes of this application cannot succeed. Hence at this stage any complaint about the arrest of the applicants would appear to be purely academic and of no relevance to an application for a Writ of Habeas Corpus against the detention by the applicants by order of the Minister for Home Affairs.

Another ground on which the applications are founded is that the detention of the applicants is not within the scope of the Emergency (P.O.P.C.) Ordinance, 1969. It is conceded by counsel that the proclamation of emergency made on May 15, 1969 by the Yang Dipertuan Agung by virtue of the powers conferred under Article 150 of the Federal Constitution was valid and correct. Subsequent to this proclamation, this Ordinance was promulgated on the 16th of May, 1969. Counsel argues that detention of the applicants on the grounds that they were engaged

in drug trafficking does not come within the scope of the Ordinance nor was contemplated by the Ordinance. He argues that it was for the sole purpose of suppressing crimes of violence and therefore its scope was limited. Counsel cited certain Indian authorities (*Kochuni & Ors.* v. *The States of Madras & Kerala*[3]) to say that the preamble to the Ordinance can be looked into to understand the scope of the Ordinance. He further argued that the language was clear and the Ordinance must be limited to what is intended (*Burrakur Coal Co.* v. *Union of India*[4]). He further cited authorities to support the proposition that the object and the policy of Ordinances was material (*Sheikh Gulfan* v. *Sant Kumar*[5]) and what was intended to be redressed by the Ordinance must be considered (*Sundararamier & Co.* v. *State of Andhra Pradesh*[6]). With these propositions the court agrees. According to counsel the recitals in the Ordinance make it very clear that the Ordinance was passed for a limited purpose. He relies on paragraph 3 of the recitals of the Ordinance which reads:—

"AND WHEREAS the Yang di-Pertuan Agong is satisfied that immediate action is required for securing public order the suppression of violence and the prevention of crime involving violence; it is hereby enacted...."

First and foremost the preamble is not part of the Ordinance although one can look into it to understand the scope of the Ordinance, but the language of a preamble is not necessarily as precise and as unambiguous as the operative part of the Ordinance. The words "securing public order" are indeed very wide in scope and its ambit is not circumscribed by its juxtaposition with the words "the suppression of violence and the prevention of crime involving in violence". If it was the intention of the King to promulgate the said Ordinance purely for suppression of violence and crimes involving violence, the words "securing public order" would be superfluous and under the established canons of construction nothing in an Ordinance should be rejected as superfluous. It must be remembered that the Ordinance was promulgated in the context of turbulence and lawlessness in the country after the riots of May 13, 1969 and no exhaustive list of types of offences could be listed for inclusion in the recital and the words "securing public order" contemplated dealing with all acts which were a threat to peace, order and good Government. Public order in ordinary language would simply mean order among the public for the good of the public. In the Privy Council case of *Ashbury* v. *Ellis*[7] the appellant appealed from the Court of Appeal of New Zealand which had given judgment in favour of the respondent against the appellant who, neither by himself nor his agent, was present in the colony of New Zealand. The contention of the appellant was that the Act of Parliament (15 and 16 Victoria c. 72) which gave to the legislature of New Zealand power to make laws for the peace, law, order and good government of New Zealand did not give it power to subject to its judicial tribunals persons who neither by themselves nor by their agents were present in the colony. Lord Hobhouse in the course of the judgment says as follows:—

"If the New Zealand Legislature had enacted that, in a concrete case such as the present one, the New Zealand Courts should have power to give the plaintiff a decree notwithstanding that the defendant held himself aloof, we should hardly have heard the suggestion that such a law was not one for the peace, order, and good government of New Zealand. Of course they have framed their law in more abstract and flexible terms. But, taking those terms, their Lordships are clear that it is for the peace, order, and good government of New Zealand that the Courts of New Zealand should, in any case of contracts made or to be performed in New Zealand, have the power of judging whether they will or will not proceed in the absence of the Defendant. The power is a highly reasonable one. So far as regards service of process on persons not within their local jurisdiction, or substituted service, or notice in lieu thereof, in proper cases the English Courts have it conferred on them by the Imperial Parliament. The New Zealand Legislature, it is true, has only a limited authority; but in passing the rules under discussion, it has been careful to keep within its limits."

Their Lordships then proceeded to dismiss the appeal.

Similarly, in another Privy Council case, *Charles Russel* v. *The Queen*,[8] there was an appeal from the Supreme Court of the Province of New Brunswick. The question raised in the appeal was as to the validity of the Canada Temperance Act, 1878, which in effect, wherever throughout the Dominion it was put in force, uniformly prohibited the sale of intoxicating liquors except in wholesale quantities or for certain specified purposes, regulated the traffic in the excepted cases, made sales of liquors in violation of the prohibitions and regulations contained in the Act criminal offences, punishable by fine and for the third or subsequent offence by imprisonment.

The appellants contended that having regard to the provisions of the British North America Act, 1867 relating to the distribution of legislative powers it was not competent for the Parliament of Canada to pass the Act in question.

Under the British North America Act, 1867 section 91 reads as follows:—

"It shall be lawful for the Queen by and with the advice and consent of the Senate and House of Commons to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislature of the Provinces...."

Their Lordships considered contentions that these laws belonged to classes of subjects by the Act assigned exclusively to the legislature of the Provinces and came to the conclusion that they did not. One of the arguments raised by the appellants was that the Temperance Act in question properly belonged to the class of subjects "property and civil rights". Sir Montague E. Smith delivering his judgment on pages 838 and 839 had this to say:—

"...It has in its legal aspect an obvious and close similarity to laws which place restrictions on the sale of custody of poisonous drugs, or of dangerously explosive substances. These things, as well as intoxicating liquors, can, of course, be held as property, but a law placing restrictions on their sale, custody, or removal, on the ground that the free sale or use of them is dangerous to public safety, and making it a criminal offence punishable by fine or imprisonment to violate these restrictions, cannot properly be deemed a law in relation to property in the sense in which those words are used in the 92nd section. What Parliament is dealing with in legislation of this kind is not a matter in relation to property and its rights, but one relating to public order and safety. That is the primary matter dealt with, and though incidentally the free use of things in which men may have property is interfered with, that incidental interference does not alter the character of the law. Upon the same considerations, the Act in question cannot be regarded as legislation in relation to civil rights. In however large a sense these words are used, it could not have been intended to prevent

the Parliament of Canada from declaring and enacting certain uses of property, and certain acts in relation to property, to be criminal and wrongful. Laws which make it a criminal offence for a man wilfully to set fire to his own house on the ground that such an act endangers the public safety, or to overwork his horse on the ground of cruelty to the animal, though affecting in some sense property and the right of a man to do as he pleases with his own, cannot properly be regarded as legislation in relation to property or to civil rights. Nor could a law which prohibited or restricted the sale or exposure of cattle having a contagious disease be so regarded. Laws of this nature designed for the promotion of public order, safety, or morals, and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which fall within the general authority of Parliament to make laws for the order and good government of Canada, and have direct relation to criminal law, which is one of the enumerated classes of subjects assigned exclusively to the Parliament of Canada."

Their Lordships then dismissed the appeal.

It is therefore clear that securing public order covers suppression of crimes which endanger the safety of the people and cause harm to society. It must also be remembered that although the Emergency (P.O.P.C.) Ordinance, 1969, was passed to come into force immediately during the riots of 1969 Parliament which has been in session after that has deemed fit not to repeal it, thereby endorsing the proposition that the powers given under the Emergency (P.O.P.C.) Ordinance, 1969 were still necessary for securing public order in this country. Detention of persons found to be trafficking in drugs is therefore well within the scope of the Ordinance as it is a notorious fact that the trafficking in drugs causes serious harm and destroys the body politic not only nationally but also internationally.

The third ground which the applicants raised is that they had no opportunity to make representations against their detention. It is conceded by all of them that they were served, together with the orders of detention, with certain forms. The first applicant, Patrick Eugene Long @ Jimmy, and the second applicant, Donnie Lee @ Avila @ Danny, were served with two forms and two notifications, namely,

"FORM I

EMERGENCY (PUBLIC ORDER AND PREVENTION OF CRIME) ORDINANCE, 1969

REPRESENTATIONS IN CONNECTION WITH DETENTION ORDER

To the Minister of Home Affairs .....
Chairman, Advisory Board

†Name in full .....

Race ..... State No. .....

National Status: (a) CITIZEN (b) NON-CITIZEN
(Delete (a) or (b) where not applicable)

Occupation .....

Permanent Resident .....

Place of Detention .....

Date and Place of Arrest .....

I, the above-named .....
hereby make representations regarding the Order for my detention made under section 4(1) of Emergency (Public Order and Prevention of Crime) Ordinance, 1969 as follows:—

.....

.....

Dated this ..... day of 19

.....
Signature or Mark

† If the detainee is known by more than one name, each of such names must be inserted in full.

S S. FORM 13B

NOTIFICATION OF RIGHT TO MAKE REPRESENTATION
EMERGENCY (PUBLIC ORDER AND PREVENTION OF CRIME) ORDINANCE, 1969

On ..... I, ...
was informed in the ..... language/dialect that I am entitled under Section 5(1) Emergency (Public Order and Prevention of Crime) Ordinance, 1969 as modified by the Emergency (Internal Security) (Modification of Laws) Ordinance No. 4 of 1969 to make representations in writing in connection with the Order of Detention made by the Minister under Section 4(1) Emergency (Public Order and Prevention of Crime) Ordinance, 1969, and served on me on ..... and that such written representations, if any, should be forwarded within fourteen days of my being so informed to Chairman, Advisory Board.

2. I also acknowledge receipt of a copy of Form I to make my representations in writing if I wish to against the Order of Detention.

Signed:.....
(Detainee)

Date:.....

Witness by:.....

Rank & Name:.....

.....

S.S. FORM 13A

NOTIFICATION OF RIGHT TO MAKE REPRESENTATION
EMERGENCY (PUBLIC ORDER AND PREVENTION OF CRIME) ORDINANCE, 1969

On ..... I, ...
a non-citizen was informed in the ..... language/dialect that I am entitled under Section 5(1) Emergency (Public Order and Prevention of Crime) Ordinance, 1969 (as modified by the Emergency (Non-Citizens) Regulations, 1965 — L.N. 230/65) to make representations in writing in connection with the Order of Detention made by the Minister under Section 4(1) Emergency (Public Order and Prevention of Crime) Ordinance, 1969 and served on me on ..... and that such written representations, if any, should be forwarded within two months of my being so informed to the Minister of Home Affairs.

2. I also acknowledge receipt of a copy of Form I to make my representations in writing if I wish to against the Order of Detention.

Signed:.....
(Detainee)

Date:.....

Witness by:.....

Rank & Name:.....

.....

BORANG I
(Kaedah 3 (2))
KAEDAH-KAEDAH KETENTERAMAN AWAM DAN MENCHEGAH JENAYAH (ACHARA), 1972
RAYUAN BERHUBONG DENGAN PERENTAH TAHANAN

Kepada Setiausaha, Lembaga Penasihat

Nama Penoh: .....

Alias: .....

KPPN No.: ..... Bangsa: .....

Pekerjaan: .....

Tempat Kediaman Tetap: .....

Tempat Tahanan: .....

Tarikh dan Tempat ditangkap: .....

Saya, ...

.....

yang bernama diatas dengan ini membuat rayuan terhadap perentah tahanan saya saperti berikut:

Saya bercadang/tidak bercadang hendak hadzir di-hadapan Lembaga Penasihat.

Saya bercadang/tidak bercadang untuk diwakili oleh peguambela.

Saya akan bercakap dengan Lembaga dalam †bahasa/loghat .....

(† Untuk dipenohi hanya jika orang yang membuat rayuan itu bercadang hendak hadzir dihadapan Lembaga)

Bertarikh: ..... haribulan ....., 19.....

.....
Tandatangan atau Tanda Orang Tahanan

Rayuan direkodkan oleh: .....

.....
(Jika yang diatas tidak ditulis oleh orang tahanan)

Dibaca/Diterjamahkan kepada orang tahanan oleh .....

.....
(Jurubahasa)

Pengakuan oleh orang tahanan bahawa yang diatas oleh di-bacakan/diterjemahkan kepadanya.

.....
Tandatangan atau Tanda Orang Tahanan."

The third applicant, Rudolf Robert Strictzbo @ Robbie @ Rob @ Radin Ariff, was served with one form and one notification, namely,

"S.S. FORM 13A
NOTIFICATION OF RIGHT TO MAKE REPRESENTATION
EMERGENCY (PUBLIC ORDER AND PREVENTION OF CRIME) ORDINANCE, 1969

On ....., I .....

a non-citizen was informed in the ..... language/dialect that I am entitled under Section 5(1) Emergency (Public Order and Prevention of Crime) Ordinance, 1969 (as modified by the Emergency (Non-Citizens) Regulations, 1965 — L.N. 230/65) to make representations in writing in connection with the Order of Detention made by the Minister under Section 4(1) Emergency (Public Order and Prevention of Crime) Ordinance, 1969 and served on me on ..... and that such written representations, if any, should be forwarded within two months of my being so informed to the Minister of Home Affairs.

2. I also acknowledge receipt of a copy of Form I to make any representations in writing if I wish to against the Order of Detention.

Signed: .....
(Detainee)

Date: .....

Witness by: .....

.....

.....

FORM I
EMERGENCY (PUBLIC ORDER AND PREVENTION OF CRIME) ORDINANCE, 1969
REPRESENTATIONS IN CONNECTION WITH DETENTION ORDER

To the Minister of Home Affairs .....
Chairman, Advisory Board

†Name in full .....

Race ..... State No. .....

National Status: (a) CITIZEN (b) NON-CITIZEN
(delete (a) or (b) where not applicable)

Occupation .....

Permanent Resident .....

Place of Detention .....

Date and Place of Arrest .....

I, the above-named .....
hereby make representations regarding the Order for my detention made under Section 4(1) of Emergency (Public Order and Prevention of Crime) Ordinance, 1969 as follows:—

.....

.....

Dated this ..... day of ..... 19.....

.....
Signature or Mark

† If the detainee is known by more than one name, each of such names must be inserted in full."

The applicants complain that they have been prejudiced by the forms they were given and that while section 8 of the Emergency (P.O.P.C.) Ordinance, 1969 has not been repealed the Emergency (Detained Non-Citizens) Regulations, 1965, have been repealed by the Act A61. The applicants maintain that they were confused by the number and nature of the forms. The applicants further contend that Article 151 only refers to citizens and that section 5 of the Emergency (P.O.P.C.) Ordinance, 1969, also refers to citizens. They contend that Form 13A gives them two months to make written representations while in fact under the Public Order and Prevention of Crime (Procedure) Rules, 1972 representations must be made within two weeks. It is perhaps unfortunate that some forms other than those prescribed by the Public Order and Prevention of Crime (Procedure) Rules, 1972, were used. In the case of the first two applicants, Patrick Eugene Long @ Jimmy and Donnie Lee Avila @ Danny, they were also served with the form under the present rules, that is, Public Order and Prevention of Crime (Procedure) Rules, 1972, in Bahasa Malay-

sia and notification informing them of their rights to make representations under the new rules. In the case of the third applicant, he was served with a form but not the one prescribed under the new rules. But, however, to say that they were prejudiced, or even confused, is hardly credible. The substantive law, section 4 of the Emergency (P.O.P.C.) Ordinance, 1969, only requires the detainee to be given the opportunity of making representations against the Order as soon as may be. Section 4 subsection (4) of the Emergency (P.O.P.C.) Ordinance, 1969, reads as follows:—

"(4) Whenever any person is detained under a detention order he shall, in accordance with Article 151 of the Constitution, as soon as may be —

(a) be informed of the grounds of this detention;

(b) subject to Clause (3) of the said Article (which provides that no authority may be required to disclose facts whose disclosure would in its opinion be against the national interest) be informed of the allegations of fact on which the order is based; and

(c) be given the opportunity of making representations against the order as soon as may be."

There is no denial by the applicants that the notifications enabling them to make representations were served on them and therefore there is no question of their being denied the opportunity to make representations. Their complaint is that as far as the first two applicants are concerned, one of the notifications and one of the forms were not the proper ones and in the case of the third applicant both the form and notification were not proper.

The law and rules made thereunder are to be interpreted under the Interpretation and General Clauses Ordinance, 1948 and not under the Interpretation and General Clauses Act of 1967 because the Interpretation and General Clauses Act, 1967 section 2 reads as follows:—

"2. (1) Subject to this section, this Act shall apply for the interpretation of and otherwise in relation to —

(a) this Act and all Acts of Parliament enacted after the commencement of this Act;

(b) all laws, whether enacted before or after the commencement of this Act, revised under the Revision of Laws Act, 1968;"

The Emergency (P.O.P.C.) Ordinance and Rules do come under the above categories. Now section 7 of the Interpretation and General Clauses Ordinance, 1948 reads as follows:—

"7. Save as is otherwise expressly provided, whenever forms are prescribed slight deviations therefrom, not affecting the substance or calculated to mislead, shall not invalidate them."

It is clear, therefore, that forms are not substantive law; they are to facilitate easy compliance with the rules. Any error in the form does not offend substantive law. Any minor differences in the forms which do not adversely affect the person concerned and which do not cause injustice to be done do not necessarily invalidate a lawful act. Furthermore, under the *de minimis non curat lex* principle, the law does not concern itself with trifles when applied to a statutory provision. In this case, the first question the court has to consider is whether the provisions of the law that the detained person should be given an opportunity of making representations have been infringed or not. On looking at the notifications served on all the applicants the answer is definitely in the negative. The only complaint the first applicant, Patrick Eugene Long @ Jimmy, and the second applicant, Donnie Lee Avila @ Danny, can have is that they were served with notifications one of which gave them the right to make representations within fourteen days and the other which gave them the right to make representations within two months. As far as the third applicant is concerned, his notification gave him the right to make representations within two months. Therefore, the question may arise that, if these applicants had made representations after the expiry of the fourteen days they would have been precluded and thus prejudiced. But when one looks at the rules this argument is not maintainable. Section 3(4) and section 3(5) of the Public Order and Prevention of Crime (Procedure) Rules, 1972, reads as follows:—

"(4) It shall be the duty of the Officer in Charge to forward to the Secretary any written representations received by him from a detained person, whether within the period of fourteen days mentioned in paragraph (2) or not; but any written representations received by the Secretary which have not been despatched before the expiry of that period shall be deemed to have been made out of time unless the Chairman is satisfied that the delay was not due to the fault of the detained person making the representations but was due to circumstances beyond his control.

(5) Representations deemed to have been made out of time shall not be dealt with under rule 5 but may at the discretion of the Chairman be dealt with by way of review under section 7 of the Ordinance and shall if so dealt with be disposed of in accordance with the procedure specified in rule 6."

It is quite clear that under the rules and given the facts of these cases the delay would and could not be construed as being due to the fault of the detained person making the representations but was due to circumstances beyond his control. So the question of the applicants being in any way prejudiced or adversely affected does not arise. Secondly, as far as the forms are concerned, the first two applicants were served with the proper forms but they were in Bahasa Malaysia. Bahasa Malaysia being the national language of this country, no one can complain if a statutory form in Bahasa Malaysia is served on him. The applicants being foreigners could have had every right to request the officer-in-charge to translate it for them. But, be that what it may, all three of them were also served with another form which although not identical with the form prescribed by the Public Order and Prevention of Crime (Procedure) Rules substantively enabled them to give particulars of themselves and make representations. If they had made representations on those forms and the forms had been rejected, or if they had wanted to retain counsel to represent them and the request was refused, or if they made representations after the period of fourteen days and the representations had not been considered, then certainly this court will consider that provisions of the substantive law have been violated. But, nowhere in the affidavits, nor in the submission of counsel, have these averments been made or even arguments advanced. So, from the affidavits and from the facts before the court, it is quite clear that it was not that the applicants were not given the opportunity to make representations against the order of detention but that they for reasons best known to themselves were not interested or did not want to make any representations against the orders of detention.

Furthermore, the argument that Article 151 and section 5 of the Emergency (P.O.P.C.) Ordinance, 1969

applies only to citizens is wholly misconceived. While Article 151(1)(b) may refer to citizens, Article 151(1)(a) and section 5 of the Emergency (P.O.P.C.) Ordinance, 1969 clearly, by the use of the word 'person', refer to both citizens and non-citizens. In fact, section 5(2A) of Ordinance 5 of 1969 only restricts the rights of citizens as they may be detained without any representations made by them after Article 151(1)(a) of the Constitution having been considered for a period of three months commencing immediately after the sixtieth day following the date of arrest under section 3. I am satisfied, as far as substantive law is concerned, there has been no mischief to the law and all the rights guaranteed to the applicants by the Constitution have been accorded them. Furthermore, all the protection offered them by Ordinance 5 of 1969 has been given. In coming to this decision, the court had to seriously consider whether there was a failure on the part of the authorities to comply with section 3 sub-section (1) of the Public Order and Prevention of Crime (Procedure) Rules, 1972, strictly to the letter and the failure of the officer-in-charge of the place of detention to supply the applicants with two copies (or, if the detained person states that he intends to engage an advocate to represent him, three copies), of Form I in the Schedule, makes the Order of Detention invalid and unconstitutional and makes the detention itself illegal.

The first and fundamental question the court has to ask itself is whether this failure has resulted in substantial injustice to the applicants.

The argument that the officer-in-charge of the place of detention did not inform the applicants of their rights to make representations nor did he personally serve copies of the detention order and the forms will have no validity as in this case on the applicants' own admission they had all received the orders of detention and the forms before they were actually detained in the place of detention. Taking all these into consideration I have come to the conclusion that no injustice was done to the applicants nor were they in any way prejudiced in their rights to make representations against the orders of detention.

The final ground of complaint was that the statements under section 5(2)(b) of the Ordinance 5 of 1969 was not under the hand of the first respondent. Counsel abandoned the first part of his fourth ground, namely, the copy of the purported detention order under the hand of the first respondent served on them was unsigned. With regard to the complaint there is no merit whatsoever in this argument. Under the Delegation of Powers Ordinance 1956, section 17, the Minister is entitled to delegate powers to officers and direct them to issue statements. Section 6 and section 17 of that Ordinance read as follows:—

"6. (1) Subject to the provisions of section 11 of this Ordinance and of any provision of any written law expressly to the contrary all acts, orders or directions which could lawfully be done or given, in the exercise of any power or in the performance of any duty conferred or imposed by any written law, by a Minister or the Chief Minister of a State may, subject to any directions given by him be validly and effectively done or given on his behalf and in his name by any officer under his administrative control and expressly or impliedly authorised by him generally or specially thereto or in the case of a Minister be done or given on his behalf and in his name by an Assistant Minister.

(2) A certificate in writing purporting to be under the hand of a Minister or Chief Minister personally that any person was at the material date an officer under his administrative control or that any such officer was expressly or impliedly authorised by him to do or give a certain act, order or direction shall be conclusive evidence of the facts stated in such certificate.

17. (1) Where by any written law power is given to a Minister or the Chief Minister of a State to make any regulation or order or give any direction, approval, permission or consent, or where any document is required to be under the hand of, or signed or countersigned by such Minister or Chief Minister it shall be sufficient, unless it is otherwise expressed, for such regulation, order, direction, approval, permission consent or document to be signified under the hand of, or signed or countersigned by, any officer under the administrative control or direction of such Minister or Chief Minister as the case may be and expressly or impliedly authorised by him by name or office in that behalf or in the case of a Minister under the hand of or signed or countersigned by an Assistant Minister.

(2) A certificate in writing purporting to be under the hand of the Minister or Chief Minister personally that any person was at the material date an officer under his administrative control or that any such officer was expressly or impliedly authorised by him to signify, sign or countersign a certain regulation, order, direction, approval, permission, consent or document shall be conclusive evidence of the facts stated in such certificate.

(3) Where any such regulation, order, direction, approval, permission, consent or document has been signified, signed or countersigned by any officer not authorised in that behalf the Minister or Chief Minister concerned as the case may be may ratify such signification, signature or counter signature and thereupon the same shall have effect as if at the date on which such signification, signature or countersignature was effected or affixed by such officer he had been duly authorised thereto."

As far as the order of detention is concerned the law on it is well settled. I only need to quote Suffian F.J. (as he then was) in the case of *Karam Singh* v. *Menteri Hal Ehwal Dalam Negeri, Malaysia*[9] at page 152 where he said:

"In my judgment, the onus of proving the legality of the detention is on the Minister in the first instance. This he can discharge simply by producing the order of detention which, if its authenticity and good faith are not impugned, is a sufficient answer. If the detainee alleges *mala fides*, as he does here, then the onus shifts to him and it is for him to prove *mala fides*."

I would also like to refer to the judgment of Abdoolcader J. in the case of *Yeap Hock Seng* v. *Minister for Home Affairs, Malaysia*[10] at page 282 where he says the following:—

"The burden of proving lawful justification for the detention lies on the respondents. This they do by relying on the detention order which must be made in the exercise of a valid power, in this case section 4(1) of the Ordinance. Once this is shown it is for the *detenu* to show that the power was exercised *mala fide* or improperly for collateral or ulterior purpose in *fraudem legis* (*Karam Singh*, [1969] 2 M.L.J. 129) *Aminah* v. *Superintendent of Prison, Pengkalan Chepa, Kelantan*, [1968] 1 M.L.J. 92). The concept of subjective satisfaction of the Minister would be a sufficient justification for the detention unless the *detenu* can show that the power vested in the Minister to make the order with regard to him has been exercised *mala fide* or improperly resolving into a position so felicitously put by Remfree J., in *Gitendranath Ghosh* v. *Chief Secretary to the Government of Bengal*, I.L.R. 60 Cal. 364 to the effect that 'although the forms of law have been observed there has been a fraud upon the Act or an abuse of the powers given by the Legislature'."

and at page 284 the learned judge said as follows:—

"It might perhaps be open to the applicant to suggest that the circumstances surrounding his case might possibly reflect some suspicion of *mala fides* but this cannot be taken for granted or considered sufficient proof by itself. It is my

considered view that the object and *ambit* of the Ordinance is such and the purposes specified in section 4(1) so wide as to negate any right in the applicant in the circumstances of this case to demand that the grave question of his guilt or innocence on the tentative charge of murder should be left to the court and the jury-box as the sanctuary of his life and liberty and not submerged in the amplitude of preventive detention on the basis of executive discretion and satisfaction conceived in the mind of the Minister or perhaps animated in his breast within the purview of the prescribed statutory provision on relevant grounds. Mere circumvention of the ordinary process of law cannot by itself amount to *mala fides* as otherwise this would in most cases virtually result in rendering moribund and impotent the laws legally enacted to provide for preventive detention for specified purposes."

Hence it is clear that the order of detention is not justiciable. But, however, it would have been open to the applicants to prove *mala fides* on the part of the detaining authorities and thus establish their right to the writ of habeas corpus on the ground that the order of detention is invalid. However, the onus of establishing *mala fides* is on the applicant but in this case there is not even the slightest suggestion on the part of the applicants that the order of detention was made *mala fides* nor has any attempt been made to establish *mala fides* on the part of the detaining authorities. Applicants have relied on other grounds to establish their right to the writ of habeas corpus. Therefore, in my view, there are no grounds whatsoever on which the court can hold there has been a transgression of the law in the order of detention issued by the Minister for Home Affairs.

Counsel also argued that Pulau Jerejak was a place of rehabilitation for citizens and therefore it was wrong to detain the applicants there. In this context I would not hesitate to say this is a total misconception. Pulau Jerejak is primarily a place to punish those who merit being detained there. It is to incarcerate them and prevent them inflicting more harm to society and attempting to destroy it. The second purpose is to deter them when they are released from following their old modes of life and also to deter others who may be like-minded from committing similar acts and deeds. Finally, if the detainees while under detention realise the evils of their ways and recognize that there is no place for their way of life in the context of the Malaysian society then they, and only they, have the opportunity of availing themselves of the facilities for rehabilitation offered to them in a detention centre. Some detenus do after a passage of time relent and repent and change their ways and earn the right to take their place in our society again. Others don't, and their expressions of repentance are as empty as their professions of a change of heart. Pulau Jerejak is a detention centre plain and simple. It is neither a holiday resort nor a rehabilitation centre.

In the result the application for habeas corpus fails. So, as far as the three applicants, Patrick Eugene Long @ Jimmy, Donnie Lee Avila @ Danny and Rudolf Robert Strictzbo @ Robbie @ Rob @ Radin Ariff, in Miscellaneous Criminal Applications 5, 6 & 7/76, respectively, have applied for writs of habeas corpus, the applications are dismissed.

Applications dismissed.

Solicitors: *Karpal Singh & Co.*

GOVERNMENT OF MALAYSIA v. LIN TING HSI

[A.C.J. (Hashim Yeop A. Sani J.) June 24, 1975]
[Ipoh — Civil Suit No. 258 of 1974]

Income Tax — Leave to sign final judgment given — Appeal by taxpayer — Effect of legislation — Income Tax Ordinance, 1947, ss. 72(1) & 81 — Income Tax (Amendment) Act, 1960, s. 2 — Income Tax Act, 1967, ss. 2, 96, 97(1), 99, 103(1) & (4), 106, 142(1) & 143 — R.S.C. O.14 r.1.

Income Tax Act, 1967 — Meaning of "assessment" and "sufficient" — Income Tax Act, 1967, ss. 2 & 142(1.

The respondent/plaintiff was granted leave to sign final judgment against the appellant/defendant for $692,722.91 being income tax due for the Years of Asesssment 1961 Additional to 1971 Additional (inclusive) and 10% increased levied under section 103(4) of the Income Tax Act, 1967. As required by the relevant provisions of the Income Tax Ordinance, 1947 and the Income Tax Act, 1967, the respondent had notified the appellant of the amount of chargeable income, the tax thereon, the place at which payment was to be made, the penalty for late payment increase and his rights of appeal. Notwithstanding these, the appellant failed to pay the said sum within the prescribed period. On the respondent's application, leave to sign final judgment was granted by the Senior Assistant Registrar, High Court, and he appealed against the latter's decision.

Held, dismissing the appeal: (1) the effect of the relevant provisions of the Income Tax Act, 1967 is that on the service of a notice of assessment on the person assessed the tax payable under the assessment becomes due and payable at the place specified in the notice, whether or not the person appeals against the assessment, and the tax can then be recovered by the Government by civil proceedings as a debt due to the Government. On such civil proceedings brought by the Government, the court has no power to entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased;

(2) the provision of section 103 is not confined only to one assessment or a composite assessment. The word "assessment" is defined in section 2 of the 1967 Act to mean *any* assessment;

(3) in the context of sections 103(1), 106(1) & (3), 143(1) of the Income Tax Act, 1967 the word "sufficient" in section 142(1) means that it is conclusive for the purpose of O.14 r.1.

Cases referred to:-

(1) *Sun Man Tobacco Co. Ltd.* v. *Government of Malaysia* [1973] 2 M.L.J. 163.

(2) *Comptroller of Income Tax* v. *A. Co. Ltd.* [1966] 2 M.L.J. 282, 284.

(3) *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* [1921] 1 K.B. 64, 71.

(4) *Board of Trade* v. *Sailing Ship "Glenpark" Limited* [1903] 2 K.B. 324, 329-330.

(5) *Jacobs* v. *Booth's Distillery Company* 85 L.T.R. 262 (H.L.).

(6) *Re Prince Blucher, Ex parte Debtor* [1931] 2 Ch. 71.

(7) *Warburton* v. *Loveland* [1832] 2 Dow. & Cl. 480, 489.

CIVIL SUIT.

Abdul Rashid bin Abdul Manaff (Federal Counsel) for the respondent.

W.E. Balasingam for the appellant.

Hashim Yeop A. Sani J.: On January 6, 1975 the respondent applied for leave to sign final judgment in the action against the appellant for $692,722.91, the amount endorsed on the writ with interest at the rate of 6 per cent per annum from the date of judgment to the date of payment and costs. In the statement of claim it was alleged that the appellant was justly